

Amendment No. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2595*

House Bill No. 2846

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following as a new part:

47-18-5601.

As used in this part:

(1) "Authorized dealer" means an individual, corporation, or limited liability company authorized by a manufacturer or distributor to sell, barter, or exchange a particular make of new farm machinery;

(2) "Comparable farm machinery" means an identical or substantially similar replacement piece of farm machinery;

(3) "Consumer" means:

(A) A person who purchases or leases a piece of new farm machinery for purposes other than resale; or

(B) A person entitled to enforce the obligations of a warranty during the quality assurance period;

(4) "Distributor" means any person who sells or distributes new and unused farm machinery to authorized dealers;

(5) "Express warranty" has the same meaning as described in § 47-2-313;

(6) "Farm machinery":



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(A) Means self-propelled equipment or machinery primarily used for agricultural purposes purchased or leased by a consumer for the first time from a manufacturer, distributor, or authorized dealer; and

(B) Does not include an off-highway vehicle as defined in § 55-8-101(12) and (13), an all-terrain vehicle as defined in § 55-8-101(1), equipment under twenty-five (25) horsepower, lawn tractors, or lawn mowers;

(7) "Full purchase price" means the cost paid by a consumer, including any collateral charge;

(8) "Manufacturer" means a person who manufactures, assembles, or imports new farm machinery;

(9) "Manufacturer's warranty" means a warranty given by the manufacturer of farm machinery against defects in the components and workmanship and a promise to cure defects;

(10) "Nonconformity" means any defect or condition affecting a piece of farm machinery that:

(A) Does not conform with the terms of an express warranty issued by a manufacturer to a consumer;

(B) Significantly impairs the use, value, or safe operation of the farm machinery; or

(C) Is not the result of abuse, neglect, or failure by a consumer to operate and maintain the farm machinery according to a manufacturer's operator manual or maintenance recommendations;

(11) "Person" means a natural person, partnership, corporation, association, trust, estate, or other legal entity;

(12) "Quality assurance period" means the earliest of the following:

(A) Twelve (12) months after the date of delivery of new farm machinery to a consumer;

(B) Twelve (12) months after the date of delivery of any comparable farm machinery to a consumer; or

(C) After the first six hundred (600) hours of operation of the farm machinery by a consumer;

(13) "Reasonable allowance for use" means an amount attributable to use by a consumer:

(A) Before the consumer's first report of a nonconformity to a manufacturer, distributor, or authorized dealer;

(B) During any period of use of the farm machinery subsequent to the first report of nonconformity if the farm machinery is not out of service by reason of repair of a reported nonconformity; or

(C) Of any comparable farm machinery provided by the manufacturer, distributor, or an authorized dealer to a consumer while the farm machinery purchased by the consumer is out of service for repair of a reported nonconformity, but not less than the fair lease value of the farm machinery;

(14) "Reasonable number of repair attempts" means:

(A) Three (3) attempts to repair the same nonconformity, the total cost of which equals at least thirty percent (30%) of the full purchase price of the farm machinery; or

(B) Five (5) attempts to repair any nonconformity, the total cost of which equals at least fifty percent (50%) of the full purchase price of the farm machinery; and

(15) "Seller":

(A) Means a person who sells, or contracts to sell, farm machinery at retail; and

(B) Includes an authorized dealer, distributor, or manufacturer.

(a) At the consumer's discretion, a manufacturer shall replace farm machinery with comparable farm machinery or accept return of the farm machinery from a consumer and refund to the consumer the full purchase price and related repair costs specific to the machinery, less a reasonable allowance for use and a reasonable offset for physical damage to the farm machinery caused by the consumer, if:

(1) The consumer provides written notice by certified mail to the manufacturer, distributor, or authorized dealer that a piece of farm machinery does not conform to an applicable express warranty or manufacturer's warranty during the quality assurance period;

(2) The nonconformity substantially impairs the use of the farm machinery; and

(3) The manufacturer, its agent, the distributor, or the authorized dealer cannot conform the farm machinery to an applicable express warranty or manufacturer's warranty after a reasonable number of repair attempts.

(b) The consumer shall furnish clear title to, and possession of, the nonconforming farm machinery to the manufacturer, distributor, or authorized dealer at the time of a refund or replacement.

47-18-5603.

It is an affirmative defense to a claim under this part that:

(1) A defect or condition does not substantially impair the use, value, or safety of the farm machinery;

(2) A nonconformity is the result of an accident, abuse, neglect, or unauthorized modification of the farm machinery by a person other than the manufacturer, an agent of a manufacturer, the distributor, or an authorized dealer; or

(3) The consumer did not file a claim in good faith.

47-18-5604.

(a) A consumer may bring a civil action to enforce this part in a court of competent jurisdiction. A consumer must bring a legal action under this section within two (2) years after the date the consumer first reports a nonconformity to a manufacturer, an agent of a manufacturer, or an authorized dealer.

(b) This part does not limit the rights or remedies available to a consumer under any other applicable law.

(c) If a consumer prevails in a legal proceeding under this part, then the consumer may recover, as part of the judgment, a sum equal to the aggregate amount of costs and expenses, including attorney's fees, based on:

(1) Actual time expended by an attorney; and

(2) Charges reasonably incurred by the consumer in connection with the commencement and prosecution of an action under this section as determined by a court.

(d) Before filing a legal action to enforce this part in a court of competent jurisdiction, the consumer and the manufacturer, distributor, or authorized dealer may, upon mutual agreement and in good faith, attempt to resolve any issue or claim in dispute through the use of an impartial third-party mediator.

SECTION 2. This act shall take effect July 1, 2020, and applies to sales of farm machinery made on or after that date, the public welfare requiring it.

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Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2843

House Bill No. 2859*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 47-18-305(a)(5)(B), is amended by deleting the subdivision and substituting the following:

(B) Contain in boldface type, the following statements in separated paragraphs:

(i) IN ADDITION TO ANY OTHER REMEDIES PROVIDED BY LAW, IF THIS HEALTH CLUB CEASES OPERATION AND FAILS TO OFFER YOU (THE BUYER) AN ALTERNATE LOCATION WITHIN FIFTEEN (15) MILES, WITH NO ADDITIONAL COST TO YOU, THEN NO FURTHER PAYMENTS SHALL BE DUE TO ANYONE, INCLUDING ANY PURCHASER OF ANY NOTE ASSOCIATED WITH OR CONTAINED IN THIS CONTRACT.

(ii) STATE LAW REQUIRES THAT ANY HEALTH CLUB AGREEMENT THAT IS NOT CANCELLABLE ON THIRTY (30) DAYS' NOTICE OR LESS BE PAYABLE ONLY IN THE FOLLOWING MANNER, AND ANY HEALTH CLUB THAT ENTERS INTO HEALTH CLUB AGREEMENTS SHALL OFFER BOTH PAYMENT OPTIONS AT THE SAME PRICE, EXCLUDING INTEREST OR FINANCE CHARGES OR OTHER EQUIVALENT CHARGES THAT SHALL NOT EXCEED EIGHTEEN PERCENT (18%) OF THE TOTAL CONTRACT PRICE:

(a) Full payment within ninety (90) days after entering into the health club agreement; or

(b) Equal monthly installments with any down payment (unless exempt as provided by law) limited to thirty percent (30%) of the total cost



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of the agreement. Prepayment is allowed at any time with full refund of unearned finance charges.

(iii) PLEASE READ THIS CONTRACT CAREFULLY. THIS CONTRACT MAY CONTAIN PAYMENTS INCLUDING, BUT NOT LIMITED TO, ENROLLMENT FEES, ANNUAL FEES, MEMBERSHIP FEES, AND OTHER DIRECT PAYMENTS TO THE HEALTH CLUB, INCLUDING FULL PAYMENT FOR THE HEALTH CLUB AGREEMENT OR MONTHLY INSTALLMENT PAYMENTS WITH ANY DOWN PAYMENT (UNLESS EXEMPT AS PROVIDED BY LAW) LIMITED TO THIRTY PERCENT (30%) OF THE TOTAL COST OF THE AGREEMENT, AND, IN THE CASE OF INSTALLMENT PAYMENTS THAT ARE NOT MADE BY ELECTRONIC FUND TRANSFER OR CASH, AN ADMINISTRATIVE CHARGE, NOT TO EXCEED FIVE DOLLARS (\$5.00) FOR EACH BILLING PERIOD. ALL SUCH PAYMENTS MUST BE DISCLOSED IN THE CONTRACT.

(iv) THERE ARE NO AUTOMATIC OR LIFETIME RENEWALS OF THE TERM INCIDENT TO THE TERM OF THIS CONTRACT. IF THE HEALTH CLUB PROVIDES FOR A RENEWAL OPTION, THEN, UNLESS SUCH RENEWAL TERM IS CANCELLABLE ON THIRTY (30) DAYS' NOTICE OR LESS, SUCH OPTION MUST BE AFFIRMATIVELY AGREED TO IN WRITING BY THE BUYER AT THE BEGINNING OF THE RENEWAL PERIOD. IF THE HEALTH CLUB FACILITY IS LESS THAN OR EQUAL TO TEN THOUSAND (10,000) SQUARE FEET (GROSS) OF BUILDING SPACE, THEN THE ANNUAL COST OF SUCH RENEWAL SHALL NOT BE LESS THAN THIRTY PERCENT (30%) OF THE ANNUALIZED COST OF THE BASE MEMBERSHIP CONTRACT OR SEVENTY-FIVE DOLLARS (\$75), WHICHEVER IS GREATER. HOWEVER, IF THE HEALTH CLUB FACILITY IS GREATER THAN TEN THOUSAND (10,000) SQUARE FEET (GROSS) OF BUILDING SPACE, THEN THE ANNUAL COST OF SUCH RENEWAL SHALL NOT BE LESS THAN

THIRTY PERCENT (30%) OF THE ANNUALIZED COST OF THE BASE MEMBERSHIP CONTRACT OR ONE HUNDRED TWENTY-FIVE DOLLARS (\$125), WHICHEVER IS GREATER. PAYMENT OF ANY RENEWAL SHALL BE MADE AS REQUIRED BY *TENNESSEE CODE ANNOTATED, SECTION 47-18-305(a)(5)(B)(ii)*.

(v) A CONTRACT OR AGREEMENT MAY HAVE A CONTINUING PROVISION OR STIPULATION THAT PROVIDES FOR A MONTH-TO-MONTH CONTINUATION OF THE INITIAL TERM OF THE AGREEMENT, PROVIDED THE BUYER HAS THE RIGHT TO CANCEL THE CONTINUING PORTION OF THE AGREEMENT AFTER FULFILLING THE ORIGINAL TERM OF THE AGREEMENT BY TENDERING THIRTY (30) DAYS' WRITTEN NOTICE OF SUCH INTENT TO THE OPERATOR BY REGISTERED MAIL. IF SUCH CONTRACTUAL OBLIGATION HAS A CONTINUING PROVISION OR STIPULATION AFTER A REQUIRED INITIAL TERM OF MORE THAN TWO (2) MONTHS, NOTIFICATION MUST BE SENT BY THE HEALTH CLUB OPERATOR TO CONFIRM THAT THE ORIGINAL OBLIGATION WAS FULFILLED AND TO REAFFIRM THE MONTH-TO-MONTH OR CONTINUING PROVISION OR STIPULATION. SUCH NOTIFICATION SHALL ALSO INCLUDE NOTICE OF THE BUYER'S RIGHT TO CANCEL THE CONTINUING MONTH-TO-MONTH OBLIGATION UPON THIRTY (30) DAYS' WRITTEN NOTICE SENT BY THE BUYER TO THE OPERATOR BY REGISTERED MAIL.

(vi) ANY RENEWAL RIGHT GRANTED UNDER THIS CONTRACT SHALL EXPIRE ON THE FINAL DAY OF THE AGREEMENT. HOWEVER, THE BUYER SHALL HAVE A THIRTY (30) DAY GRACE PERIOD FROM THE DATE OF THE EXPIRATION OF THE RENEWAL RIGHT IN WHICH TO EXERCISE ANY RENEWAL RIGHT GRANTED TO THE BUYER UNDER THIS CONTRACT. THE OPERATOR SHALL HAVE THE RIGHT TO CHARGE A LATE PENALTY OF UP TO TWENTY-FIVE DOLLARS (\$25) IF THE RENEWAL

RIGHTS ARE NOT EXERCISED ON OR BEFORE THE EXPIRATION DATE AS
STIPULATED IN THE AGREEMENT OR ANY FUTURE RENEWAL PERIODS.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it, and applies to health club agreements entered into, renewed, or amended on or after the effective date of this act.